
(2009) 09 SHI CK 0012
In the High Court Of Himachal Pradesh

Suraj Industries Limited

APPELLANT

Vs

Ravi Dutt and Others

RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 250

Citation : (2010) 1 LLJ 674 : (2009) 3 ShimLC 316

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is a Letters Patent Appeal filed by the appellant against the judgment of the learned Single Judge, dated 16.5.2008, passed in CWP No. 215 of 2005 titled Ravi Dutt and Ors. v. State of H.P. and Ors.

2. Briefly stated the facts of the case are that a writ petition was filed by the petitioners Ravi Dutt and Mast Ram alleging that the petitioners are the citizens of India and they are aggrieved because of the actions of Whether reporters of Local papers may be allowed to see the judgment? Yes. Respondents. M/s Suraj Industries Limited (present appellant) was impleaded as respondent No. 3 in the said writ petition. It was alleged that the members of the petitioners? union were engaged in service by respondent No. 3 and they were in service since 1993-94 onwards. It was alleged that in an illegal and arbitrary way, respondent No. 3, by putting undue and uncalled for pressure upon the members of the petitioners? union, have terminated their services contrary to the provisions of the Act. It was alleged that the workers were called one by one in the night by respondent No. 3 and by use of musclemen, the workers were forced to enter into agreements on 31.1.2005. It was alleged that respondent No. 3 had preferred an application for permission for retrenchment of the workmen as per the provisions of the Act and the Government, vide its letter, dated 12.2.2004, (Annexure P-4), granted permission for the retrenchment of 32 workmen only out of 141 workmen, but on certain conditions. It was alleged that the act of respondent No. 3 in closing

the Unit is contrary to the provisions of the Act as well as contrary to the public interest and, therefore, the petitioners filed the writ petition.

3. It was further alleged that respondent No. 3 had applied for permission of closure of the Unit, which was refused by the Government and despite that, by way of an alleged agreement, dated 31.1.2005, members of the petitioners' Union were forced to enter into an agreement, which was contrary to the provisions of Section 25-N and 25-O of the Industrial Disputes Act and therefore, the Company could not have been closed. The petitioners alleged that they have been authorized by the Union in its meeting held on 6.3.2005, Annexure P-1 to take suitable action in the court of law for vindicating their genuine grievances and the petitioners being the President and the General Secretary of the Union were authorized to take action. Hence the writ petition filed by the petitioners.

4. In reply filed by respondent No. 3/appellant, it was pleaded that as per the agreement, dated 31.1.2005, every worker including the petitioners voluntarily submitted their resignation letters and accepted the amount due and payable to them and have also withdrawn cheques issued to them and as such they are estopped from filing the writ petition. It was further pleaded that since the settlement has been arrived at by the individual worker in their individual capacity, as such, the Union has nothing to do, as alleged by the petitioners. It was also pleaded that the respondent No. 3 had informed the officer authorized in this behalf by the appropriate Government vide letter dated 8.2.2005 alongwith a list of the workmen with whom the settlement had been arrived, which included the present two petitioners. A copy of these communications was also addressed to Respondents No. 1 and 2 as well as to the Deputy Labour Commissioner. It was further pleaded that vide letter dated 22.3.2005, the Labour Inspector of respondent No. 2 had acknowledged and confirmed the factum of agreement/settlement arrived at with 132 employees/workers of respondent No. 3.

5. It was further pleaded that the petitioners had approached the State Government in this regard, which fact has not been disclosed in the present petition. Thereafter respondents No. 1 and 2 had directed the Labour Inspector to look into the grievances of the closure of the factory as alleged by the present petitioners in the writ petition. Thereafter, the Labour Inspector issued a show cause notice dated 15.2.2005 to respondent No. 3 as to why prosecution proceedings should not be initiated against them for violation of the provisions of the Industrial Disputes Act, 1947 and the Rules framed thereunder. The said show cause notice was duly replied by respondent No. 3 that the factory has neither been closed nor the workmen had been retrenched and that the workmen had been retired as they voluntarily submitted their resignations letters of their own free will and accord. It was also alleged that after holding a complete inquiry in this regard, the Labour Inspector sent his report dated 22.3.2005, stating that all the workmen have left service of their own will and the factory has not been closed and according to the settlement, the workmen have no dispute with the

management and no dues are remaining payable. Thus, it was pleaded that the petitioners are not entitled to the relief claimed by them.

6. The writ petition was heard by the learned Single Judge, who, vide his impugned judgment, allowed the same and held that the workmen are entitled to the benefits flowing u/s 25-O of the Industrial Disputes Act, 1947. It was also held that they will be deemed to be in continuous employment of respondent No. 3. The amount received by them towards compensation will be adjusted towards their future wages. Feeling aggrieved, the appellant has filed the present appeal.

7. We have heard the learned Counsel for the parties and have gone through the record of the writ petition.

8. The learned Counsel for the appellant, during the course of arguments, had raised various points and all the points shall be taken up one by one. The first point taken up by the learned Counsel for the appellant was that the learned Single Judge had wrongly presumed that the writ petition has been filed by the Union whereas it was filed by petitioners No. 1 and 2 in their individual capacity and not by the Union as shall be clear from the memo of parties filed in the writ petition. It was submitted that the petitioners had never been authorized by the Union to file the petition and they filed the same in their individual capacity alleging themselves to be the President and the General Secretary of the Union, but they never alleged that this had been filed by them on behalf of the Union. Thus, it was submitted that to claim a relief, the Union should have been registered and the authorization should have been given by the Union to file the writ petition which was not there and since there was no such authorization in favour of the petitioners, who filed the petition in their individual capacity but never impleaded the Union as a party. It was also submitted that both the petitioners had accepted whatever amount was due to them and had got encashed the cheques issued to them before the date of alleged meeting held on 6.3.2005 and since they were no more the workers, they ceased to be the office bearers of the Union and as such were not competent to file the present writ petition on behalf of the Union.

9. Coming to this plea raised by the learned Counsel for the appellant, a perusal of the writ petition filed, particularly the memo of parties, shows that the petition has been filed by petitioner No. 1 Ravi Dutt and petitioner No. 2 Mast Ram and thereafter it has been mentioned that the petitioners No. 1 and 2 are the President and the General Secretary of Angan Vanaspati Workers Union, Suraj Industries Limited and then the address has been given. It is clear that the Union of which the petitioners claim to be the office bearers has not been made a party and in case the petition was being filed on behalf of the Union, the Union should have been made a party though the petition could have been filed by the petitioners being its office bearers, which was never done.

10. Coming to the question of authorization in favour of the petitioners vide resolution, dated 6.3.2005, (Annexure P-1), to which a reference has been made

in the petition that the petitioners were authorized by this resolution, the said resolution is at page 18 of the writ petition. This shows that the resolution was passed on 6.3.2005 by labourers of SEL in a general meeting. It was alleged in the said resolution that the resolution was passed by all the members of the Committee to dissolve the old Committee and a new Committee was formed in which petitioner No. 1 has been mentioned as the Pradhan and Petitioner No. 2 has been mentioned as the General Secretary. The second part of resolution passed on the same day was to the effect that the Company had settled the accounts of the workers on 31.1.2005 and the management had threatened and pressurized the workers and got their signatures though none of the worker was willing to leave the service. It was also mentioned that it was decided to knock the door of the court for appropriate remedy and the Committee consisting of 11 persons mentioned as office bearers was authorized to take action. Thereafter, there are signatures of 11 persons including Petitioners No. 1 and 2 and other persons. After this resolution, there is a writing below the signatures of these 11 persons that all the workers present decided that whatever action is to be taken, the Pradhan and the General Secretary will be authorized and the selected Committee also expressed its agreement with this resolution. The Pradhan and the General Secretary are petitioners No. 1 and 2. There are no signatures after this note.

11. It is clear from a perusal of Annexure P-1 (resolution) that it was never mentioned that the meeting was held of the Union, but it was mentioned that the labourers of SEL participated in the meeting. There is no mention of the total workers present or their names or their signatures and simply it was mentioned that 11-Member Committee has been constituted in which petitioner No. 1 and 2, as mentioned above, were the office bearers and though the signatures of all these persons were already taken but under these signatures, another resolution was mentioned that petitioners No. 1 and 2 will be authorized to take action but there are no signatures of any member or the 11Member Committee that these persons had been authorized to take action in the matter. This cannot be interpreted as a resolution on behalf of the Union, namely, Angan Vanaspati Workers Union, Suraj Industries Limited, on whose behalf the petitioners now claim that they have filed the present writ petition. There is no specific authorization in their favour in any of the meeting of the Union held with the Members of the Union being present there whose names also do not find mention or their signatures and thus 11 persons appear to be present there who held the various posts including the petitioners No. 1 and 2 who proclaimed themselves to be the President and the General Secretary of this Union. There was no specific authorization on behalf of the Union in favour of these persons authorizing them to file the petition and after these a para was added in the resolution but there are no signatures of any person authorizing the petitioners to file the petition.

12. Apart from the above, it has also been pointed out by the learned Counsel for the appellant that both the petitioners had already resigned as worker and once they resigned they were no more the Members of any Union. The receipt of

petitioner No. 1 is at page 62 on the pad of the appellant having received all the payment in full amounting to Rs. 41,364/-. In the said receipt executed by petitioner Ravi Dutt, it was mentioned that he had left the job out of his own accord and had received the full payment. The receipt executed by Mast Ram, petitioner No. 2, is at page 67 in which it is mentioned that his resignation letter, dated 31.1.2005, should be accepted and he be paid the balance amount and the terms of the agreement with petitioner No. 2 are at page 68 and the receipt in detail of having received the amount is a pages 69 to 71. The petitioners have not challenged that these receipts were not executed by them or that their signatures are not there on these receipts or that they have not received these payments, though they have challenged that these receipts were executed under pressure, which plea shall be considered in the subsequent paras.

13. It is clear from the above discussion that on 6.3.2005, when the said meeting of the Union allegedly took place, petitioners No. 1 and 2 had already resigned from their work as workers, received the full payment from the Company or their employer i.e. the appellant and had also got the payments in full before the said meeting took place. The meeting was not of the Union but of workers only in which 11 persons signed and elected themselves to various posts. It cannot be said that the Union had authorized the petitioners to file the petition. It is clear that the writ petition was filed by the petitioners on 23.3.2005 after they had resigned in the month of January, 2005 and received the full payment. The learned Single Judge had not considered the effect of resignation submitted by the petitioners or the question that the petition was filed by the petitioners and not by the Union and the effect of the resolution as to whether it can be considered to be a resolution duly passed by the Union authorizing the petitioners to file the petition.

14. A perusal of the record shows that after the reply had been filed by respondent No. 3, present appellant, they were permitted to place on record a supplementary affidavit vide application, dated 25.3.2007, filed u/s 151 of the CPC in which they had alleged that they wanted to clarify certain submissions and averments made in the reply to the writ petition. It was specifically alleged in the said supplementary affidavit taken on record that the petitioners are not competent to invoke extraordinary jurisdiction of this Court in view of the fact that alternative remedy under the statute i.e. the Industrial Disputes Act, 1947 was available to them. It was also pleaded that respondents No. 1 and 2 have stated that this Union is not registered with them and the petitioners have no locus standi to file the petition and petitioner No. 1 was not the President of the Union and was not competent to file the petition.

15. From the above discussion, it is clear that the present petition filed by the petitioners cannot be said to be on behalf of the Union, though the petitioners in their individual capacity have the right to file the petition. According to the provisions of Section 2 of the Industrial Disputes Act, "Trade Union" means a trade union registered under the Trade Unions Act, 1926. This has been inserted

by act No. 46 of 1982 w.e.f. 21.8.1984. Therefore, it is clear that once the case has to be filed on behalf of a trade union, it has to be registered under the Trade Unions Act and there are no allegations or proof on record that this Union was registered at any time under the provisions of the Trade Unions Act and, therefore, the petitioners were not competent to file the petition on behalf of the Union accordingly.

16. The next point raised by the learned Counsel for the appellant was that the alternative remedy was available to the petitioners and other workers aggrieved under the provisions of the Industrial Disputes Act. It was submitted that the writ jurisdiction of this Court could not have been invoked by the petitioners once they had not invoked the provisions of the Industrial Disputes Act under which they were competent to claim the relief claimed by them in the writ petition and this alternative remedy exercising the writ jurisdiction of this Court was not available to the petitioners in the facts and circumstances of the case.

17. To substantiate his submissions, the learned Counsel for the appellant had relied upon the decision in *Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors.* (2007) 1 Scc (L & S) 750. The question of alternative remedy available was considered by their Lordships in paras 44, 45 and 46 of the judgment and it was held that dispute was relating to enforcement of workmen's right and employer's obligation under the Industrial Disputes Act, 1947. Even though specific remedy was provided under the Act, the workmen, instead of availing the same, directly approached the High Court under Article 226 of the constitution of India. No exceptional circumstances were shown for taking such a course. It was held that the High Court was not justified in entertaining the writ petition. It was further held that the petitioners, who have not invoked the jurisdiction of the Labour Court/Industrial Tribunal under the Act, are not entitled to any relief in the writ petition. The next decision relied upon was in *Uttar Pradesh State Bridge Corporation Ltd. and Ors. v. Uttar Pradesh Rajya Setu Nigam S. Karamchari Sangh* 2004 LLR 289, wherein their Lordships of the Apex Court had observed in paras 11 and 12 of the judgment as under:

11. We are of the firm opinion that the High Court erred in entertaining the writ petition of the respondent-Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947 as well the UPIDA, 1947. The rights and obligations sought to be enforced by the respondent-Union in the writ petition are those created by the Industrial Disputes Act. In the *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, it was held that when the dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the claimant is to get adjudication under the Act. This was because the Industrial Disputes Act was made to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate

procedural laws, which the workmen can ill afford. The procedure followed by civil courts, it was though, would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.

12. Although these observations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in that statute and in no other manner.

18. Reliance was also placed upon the latest decision of the Apex Court in *State of Uttar Pradesh and Anr. v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Smiti and Ors.* (2009) 1 Scc (L & S) 237. The observations made in paras 37 and 38 are relevant and are being reproduced below:

37. We have given most anxious and thoughtful consideration to the rival contentions of the parties. So far as preliminary objection raised by the Corporation before the High Court is concerned, in our considered view, the same was well founded and ought to have been upheld. It was urged before the High Court on behalf of the Corporation and the State Government that the writ petition was premature inasmuch as no retrenchment had been affected. Several disputed questions of fact were involved in the petition. If the contention of the Samiti was that there was illegal closure of undertaking or there was non-payment of wages by the employer, appropriate proceedings could have been initiated under industrial law. In fact, one of the Judges of the Division Bench upheld the contention and observed that the employees could have claimed closure compensation u/s 25FFF of the Act or could have approached prescribed authority under the Payment of Wages Act relying upon Section 33-C(2) of the Act or Section 6-H(2) of the U.P. Industrial Disputes Act. The other Single Judge of the Division Bench, however, held that the writ petition had been entertained

and interim orders were also passed. Relying upon Suresh Chandra Tewari, the learned Judge held that "the petition cannot be dismissed on the ground of alternative remedy if the same has been entertained and interim order has been passed."

38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the head note of All India Reporter (p.331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court.

....

19. The above observations of their Lordships answer the reasoning given by the learned Single Judge that since the writ petition had been admitted, therefore, this question was not open and it has been clearly laid down by their Lordships of the Apex Court that even though the writ petition had been admitted, this plea can be considered by the Court while deciding the writ petition. The mere fact that the writ petition had been admitted at the initial stage was not a ground not to consider the plea of alternate remedy.

20. It follows from the above discussion of the case law that it cannot be said that the writ jurisdiction of this Court cannot be exercised under any circumstances. Ordinarily, the provisions of the Industrial Disputes Act have to be invoked by the workers and it is only under exceptional circumstances that the writ jurisdiction of the Court can be invoked and the same can be exercised by this Court. There are no fetters on the writ jurisdiction of the Court except that this should be exercised under exceptional circumstances. Neither the petitioners alleged as to what were the exceptional circumstances to invoke the writ jurisdiction of this Court nor substantiated the same during the course of arguments. The alternative remedy is available to the petitioners to approach the Labour Court/ Industrial Tribunal for redressal of their grievances and once that remedy has not been availed of by the petitioners, they could not have invoked the writ jurisdiction of the this Court and as such the present writ petition, in such circumstances, was not maintainable and the petitioners were not entitled to the relief claimed by them.

21. Apart from the above, another plea raised by the learned Counsel for the appellant, during the course of arguments, was that there were disputed questions of fact, namely, as to the number of workers in the employment of the appellant; as to whether it was exceeding 100 or less than that; as to whether the resignation letters were procured by the appellant by exercising undue influence and pressure by using musclemen or these were voluntary and as such these questions of fact could not have been decided by the writ court, but these can be decided only by the Labour Court/Industrial Tribunal under the provisions of the Act.

22. It was submitted by the learned Counsel for the appellant that earlier an application for closure of the Industry was filed by the appellants which was rejected by the State Government but thereafter since the Company was going into losses, the workers voluntarily agreed to accept the payment and as the number of workers, at that time, was less than 100, therefore, the provisions of the Industrial Disputes Act were not applicable and as there was no retrenchment but resignations were given by the workers, accordingly, the provisions of the Act could not have been invoked by the workers. A perusal of the record shows that an application was filed by the appellant on April 4, 2003 to the Secretary (Labour) for permission of closure to be given under Sub-section (1) of Section 25-O of the Industrial Disputes Act. It was alleged therein that the number of employees whose services would be terminated on account of the closure of the Undertaking is 149.

23. Chapter V-B contains special provisions relating to layoff, retrenchment and closure in certain establishments. Section 25-K under this Chapter reads as follows:

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

24. Therefore, it is clear from the above that provisions of Section 25-B, Section 25-N and Section 25-O can be invoked only if there are more than 100 workmen in the establishment.

25. It was submitted by the learned Counsel for the respondents that the appellants had themselves alleged the number of employees working therein as 149 meaning thereby that it was more than 100 and since they had themselves invoked the provisions of the Industrial Disputes Act, it does not lie in their mouth to claim that the number of workmen was less than 100 and the provisions of the Industrial Disputes Act were not applicable once they themselves filed application under the provisions of the Industrial Disputes Act.

26. In support of the submissions that the petitioners were competent to file the writ petition, the learned Counsel for the respondent had placed reliance upon the decision in Mahinder Kumar Gupta and Others Vs. Union of India (UOI), Ministry of Petroleum and Natural Gas, wherein it was observed that the writ petition filed by an Association was not maintainable as the Association has no fundamental right under Article 32. This decision does not help the respondents in any manner.

27. Reliance was also placed upon the decision in Oswal Agro Furane Ltd. and Another Vs. Oswal Agro Furane Workers Union and Others, wherein it was held that the appellant management not having applied for permission for closure on the basis of settlement with the workers, it was held to be illegal. This decision will apply only in case there was any settlement with the workers or the Union

but in the present case there was no settlement with the Union, but it was a question of resignations tendered by the workers. The question as to whether the resignations were submitted voluntarily or not cannot be determined by this Court exercising the writ jurisdiction, which question could only be determined by the Labour Court/Industrial Tribunal once the jurisdiction of either of these two Authorities was invoked by the workers under the provisions of the Act.

28. On this point, it was submitted by the learned Counsel for the appellant that it has not been alleged that the number of workmen was 149 but the number of employees was mentioned as 149 which included other categories of employees, namely, sales representatives, accounts assistants etc. and since this number of workers was less than 100, the provisions of the Industrial Disputes Act were not applicable. However, in regard to the filing of the application by the appellant themselves, which acts as an estoppel as against them, it was submitted that the number of workers may be more at that time but when the resignation letters were submitted by the workers, their number was less than 100.

29. Our attention has been drawn to Annexure P-2 at page 20 where the number of employees has been mentioned as 149 when the permission has been sought. In Annexure P4 (the order passed by the State Government on 12.2.2004), it has been specifically mentioned that the management has applied for seeking permission for retrenchment of 50 workmen out of the total 141 workmen w.e.f. 15.3.2004 meaning thereby that the State Government had formed an opinion that the permission sought for retrenchment of 50 workmen out of 141 workmen and not employees. Therefore, the plea raised by the learned Counsel for the appellant that 149 was the total number of employees and not workmen only is not substantiated from the records, which suggested that the total workmen were 141 i.e. exceeding 100 and, therefore, the permission had been sought, though by this order the permission was granted by the State Government to retrench 32 workmen only. The category has been specified at page 26 which includes accounts assistants etc.

30. Thus, prima facie, the document suggests that the number of workmen may be more than 100 and this question cannot be determined at this stage by this Court exercising its writ jurisdiction as to whether at the time when the resignations were sought the number of workmen was 100 or less than 100 or not and it is a question of fact to be determined by the Labour Court/Industrial Tribunal on the basis of the evidence led before it and not by this Court exercising writ jurisdiction.

31. From the above discussion, it is clear that from whichever angle the facts of the case are looked into, the writ jurisdiction could not have been exercised by the petitioners for redressal of their grievances since the remedy was available to them under the provisions of the Industrial Disputes Act. No other worker has come to invoke the writ jurisdiction of this Court except the two petitioners. The petition has not been filed on behalf of the Union or in a representative capacity by the petitioners and once the remedy was available to the petitioners or other

workers under the provisions of the Industrial Disputes Act and no exceptional circumstances were made out for exercising the writ jurisdiction by this Court, the findings of the learned Single Judge that the purported settlement is quashed and set aside or that the workmen are entitled to the benefits under the provisions of the Act and they shall be deemed to be in continuous employment are liable to be set aside and as such these are set aside. The petitioners and other workers are entitled to invoke the remedy available to them under the provisions of the Industrial Disputes Act and the writ petition filed by the petitioners accordingly stands dismissed and the present appeal filed by the appellant is allowed accordingly. However, there is no order as to costs.